UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Case No. 09-55888
HARRY LOUIS PARENT, and EMELIA DELPHINE PARENT,	Chapter 7
	Judge Thomas J. Tucker
Debtors. _____ /	

ORDER DENYING DEBTORS' MOTION TO VACATE ORDER DISMISSING CHAPTER 7 CASE

This case is before the Court on Debtors' "Motion to Vacate Order Dismissing Chapter 7 Case," filed on June 9, 2009 (Docket # 16, the "Motion"), which this Court construes as a motion for reconsideration of, and for relief from, the Court's June 5, 2009 Order dismissing this case (Docket # 11).

The Court has reviewed and considered the Motion, and finds the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

In addition, the Court notes the following. The allegations in the Motion do not establish excusable neglect under Fed.R.Civ.P. 60(b)(1), FedR.Bankr.P. 9024, or any other valid ground for relief from the order dismissing this case. Any neglect or mistake by Debtor's counsel, such as that alleged in the Motion, is generally attributable to the Debtor, for purposes of determining whether any such neglect or mistake was excusable, *see, e.g.*, *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 396-97 (1993)(in determining whether "excusable neglect" is shown, "the proper focus is upon whether the neglect of [the movants]

and their counsel was excusable" (italics in original)).[1]

Additionally, the Court rejects Debtors' argument that E. D. Mich. L.B.R. 1007-1(a) is invalid because it conflicts with the Bankruptcy Code. The Court will address briefly the specific sections of the Code cited by Debtors. First, the local rule does not conflict with § 707(a)'s general requirement that dismissal of a Chapter 7 case be done "only after notice and a hearing." Code § 102(1) defines the phrase "after notice and a hearing" in such a way as to permit a rule like L.B.R. 1007-1. Second, the local rule does not conflict with § 521(i)(1). That Code section addresses a situation and remedy — *i.e.*, mandatory, automatic dismissal for failure to file required documents within 45 days after filing the petition — different from L.B.R. 1007-1 — *i.e.*, discretionary (the case "may be dismissed") dismissal after a failure to file documents within 15 days after filing the petition. Nothing in § 521(i)(1) precludes dismissal of a Chapter 7 case for this type of cause *sooner* than 45 days after the petition. And both § 105(a) and § 707(a)'s dismissal-for-cause provision, including the specific example of "cause" listed in § 707(a)(1)("unreasonable delay by the debtor that is prejudicial to creditors") permit a dismissal under the circumstances described in L.B.R. 1007-1. That local rule does not conflict with any provision of the Bankruptcy Code.

Accordingly,

IT IS ORDERED that the Motion (Docket # 16) is DENIED.

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[1] The Court notes that the only harm to Debtors that allegedly will occur if the Motion is not granted is that "[t]he Debtors will have to pay additional filing fees for a new case." (Motion at 2 ¶ 9). But this is not necessarily so. If, as the Motion suggests, the failure to file documents that led to the dismissal of this case was the fault of Debtor's counsel, rather than due to any personal fault of the Debtors, then Debtors' counsel should pay the filing fee for a new case, not Debtors.

Signed on June 10, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge